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CONCEPTUAL ANALYSIS OF CAUSATION IN LEGAL DISCOURSE

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Abstract

This article deals with the conception of causation in legal discourse. Authors firstly examine causation in the scientific, philosophical and common-sense discourse. Does it make sense to use general causal terms when examining causality in law? We can ask whether legal causality isn´t only artificial construct, legal fiction of a causal relationship. Some authors claim that legal causation is not essentially a causation in the true common sense and thus only a pragmatic political decision regarding the application of distributive and corrective justice, and economic evaluation of benefits in society, others on the contrary point out that causality in law as such is equal to its common everyday use or even in the scientific sense. What are the criteria in the legal sense that lead us to judge that certain event causes harm? Which issues relevant to philosophical discourse may be in legal discourse ignored as irrelevant? The authors show the necessary connection between terms causality in different branches although they conclude that causality is pluralistic concept. The issue of this article is to find out solution for causal connection in particular paradigmatic cases and set up some causal formulas that could be used in legal practice.

Keywords: Causation, tort law, legal liability

Introduction

This article deals with the concept of causation in legal discourse. Out of this reason, it first deals with the concept of causation on the level of science, philosophy and in a commonly used language. When exploring problems of legal and moral responsibility, it is necessary to cope with the problems of the sense of causation, causal nexus, a cause and effect. Subsequently, there is a number of questions to be explored in detail. Is the causation in a legal sense distinguished from the causation in science, everyday life, or is it understood in its metaphysical sense? Does the

terminological accord in the term of causation have its substantiation? Does it make sense to come out of some theories on general causation, when exploring the legal causation? Isn´t the legal causation only an artificial construct, which under certain conditions accepts fiction of causal relation? In this case, spectrums of opinions differ, while some authors claim that in principle the legal causation does not mean the causation in a proper sense of the word and therefore it only concerns pragmatic political decision-making (Green, 1962) on assertion of distributive and corrective justice, or efficient allocation of resources in society (Calabresi 1961), others hold, to the contrary, that causation as such has, even in law, its substantiation in the common use of this word, i.e. in the „*common sense*" (Hart &Honoré 1985) or even directly in the scientific sense (Moore 2009) . Thus, what criteria in the legal sense of the word lead us to being able to say that from the legal perspective, an action, or event is a cause of harm? What questions relevant for the philosophical discourse can be ignored in the legal discourse as non-essential, so that the sense of the whole institute cannot be impaired?

The first part of this article shall refer to the fact that both philosophical, as well as scientific causation theories have their impact on legal causation. Understanding of causation and its construct in law responds to the social discourse and principles of applied ethics, which are reflected in legislation, or judicial decisions. Thus, the first part of this article will deal with theoretical approaches to causation in the scientific, philosophical and legal discourse. The second part will deal with a question, whether it is suitable to use the institute of causal relation even in the future, as a key guideline in asserting legal responsibility. Some theorists, especially causal minimalists, who have their supporters among theorists in economic analysis of the tort law, therefore propose different criteria for the settlement of compensations for caused harm on the basis of the so-called "risk theory" (Fletcher 1972). However, if we want to answer the question as to whether the institute of a causal relation should be utilized even in the future, it is necessary to respond at least briefly to the following raised questions: What is the function of the tort law? What is the function of causation in law? These questions should be briefly resolved in the second part of this article. In what cases the currently developed causal tests and models fail? The last question will be resolved in the third chapter. The fourth part should then suggest a pragmatic, or conceptual approach to resolve causation, i.e such an approach, which could provide methodologically suitable approach to solving individual problematic issues of law, e.g. such as „*ovedetermination cases*" and „*preemption cases*".

Contemporary approaches to causation

Questions about causation in the philosophical discourse occur from its beginning, however the opinion spectrum differs and a lot of different theories exist. The lack of consensus on this fundamental question persists and therefore uncertainty about the resultant understanding of this notion remains. Unfortunately such a consensus may not be even reached. Monist theories exist, which refer to the fact that there is only one type of the causal relation; the causal pluralists, who claim that the notion of causal relationship can include more various relations, however all of them fill an analogical abstract model, therefore it is suitable to explore them under a unifying criterion of causation, and the causal eliminativists (e.g. such as Russel), who claim that all use of the word "causation" should be replaced in a scientific approach with another, more suitable construct. In law, as a practical tool for materialization of relations in society, a bigger number of terms appears, which are unified under the notion of causation. On the basis of a pragmatic test of utility, it is then suitable in individual causal theories to utilize their capacity for action in legal order, as all of these theories have their limitations (Losee, 2011).

Basic dimensions of the conflict in understanding causation can be defined approximately as follows: Is causation an ontological fact, i.e. independent of human mind and existing in an objective world, or is it merely a subjective attitude of mind to reality, i.e. is causation understood as epistemic relation (intellectual conception)? In other words, do mental events provide a correct picture of causal relations in a real world and are identical with it, or do they differ from it, or is the causation reality even dependent upon the forming mind (Kant 1989)? Scientific knowledge points out that our cognition of the world in an intuitive form is often incorrect and different from the real world - is this also true in a causal sense? The basic historical origin rather understood causation in its ontological sense. The ontological basis of causation was dealt with even by Ancient Greek philosophers, Plato dealt with it, when Timaios claims in a dialog, that all what comes into existence, necessarily stems from a certain cause (Plato, 2013) and especially Aristotle, who distinguished four kinds of cause (formal, material, efficient, and final cause), which must function together (Aristotle, 2013).

The turning point in understanding causality toward gnoseological concept is brought by the Hume´s *An Enquiry Concerning Human Understanding*. Hume does not find causation in the external world, but as a certain kind of a psychological necessity in our perception derived from experience and formulating itself in the principle of habit (Hume, 1910). Hume laid his concept of causation in two definitions, one is considered to be an external definition the other is an internal definition, i.e. a definition

which refers to the perceiving mind. In his work, he then based causation on these basic points: 1. A cause and its effect must be in conjunction both temporally and spatially; 2. A cause must precede an effect; 3. There must be a permanent bond between a cause and effect, which cannot be eliminated; 4. The same cause is followed by the same effect and the same effect never comes into existence in another way than from the same cause (Hume, 1896). This principle is derived from experience and it is a source for the majority of our philosophical derivations. The most frequently the so-called reductionist theories come from the Hume´s causal theory, i.e. the theories which do not see a real relation in causation, but only our construct and they refer to another essence of these relations. The so-called regularity theories and the INUS theory is usually placed here, but also the counterfactual theory, which, however comes from the second part of the definition in Enquiry.

Regularity theory of Causation

The most typical theory comes from the principle of regularity, i.e. according to this theory the relation between an event *c* and an event *e* is a causal relation, if, and only if the events of the *e* type regularly follow after the *c* type event. A problem of these theories of regularity view of causation is the fact that they do not differentiate between regular succession of any two actions (events) and a causal connexion of two actions (events). At the same time this definition has difficulties in dealing with singular causal statements, which do not allow for generalization. According to this definition *„the causal relation is de facto a constant sequential conjunction"* (Losee, 2011, p. 29), although one event does not have to be a cause of the other. According to Karl Pearson, it is not possible to say that causes produce their effects it is merely possible to refer to repeated sequences of our perception. Thus far, he follows up with Hume, however he defines the causal relation specifically in a way, that any time *„Whenever a sequence of perception D, E, F, G is invariably preceded by the perception C, or the perceptions C, D, E, F, G always occur in this order, that is, form a routine of experience, C is said to be a cause of D, E, F, G, which are then described as its effects"* (Pearson, 1911, p. 130).

Counterfactual theory

The counterfactual theory comes again from David Hume, however this time from his second definition stated in Enquiry: *„if the first object had not been, the second never had existed*" (Hume, 1910). The most eminent representative of this theory is David Lewis, who comes exactly from the Hume´s second definition of causation. According to him, it is more suitable to consider this definition as an independent starting point, not an

alternative theory to the theory of regular succession, as is the case in Hume. Therefore, it is necessary to come from the basic construction of the counterfactual theory, which says that *„c is the cause of e, if, and only if, if c had not occurred, then e would not have occurred"* (Lewis, 1973, p. 557). Nevertheless, even this theory has a number of controversial spots. This is especially problem of *overdetermination* and the *causal pre-emption*.

Probability theory (Probabilistic causation)

Some philosophers coming from the Hume´s skeptical doubt and after the Popper´s reference to impossibility to justify universal truthfulness of induction on the basis of the induction itself (Popper 2007), they rather incline to the method of probability than to a causal relation. Insisting on a theory that the event C will always cause an event E, cannot be proved, it can be only empirically tested and based upon this expressed in a probability form. According to the first supporters of this theory, C is then a probable cause of E, if, and only if the occurrence of C increases probability of occurrence of E. Following that Salmon adjusted this variant. The reason was that unambiguously causal sequences of conditions exist, which occur with a smaller probability (e.g. exposure to radiation and a subsequent occurrence of leukemia, which is for example 5% probability), it is however provable, that such an occurrence is statistically higher in the case, when the even C (in this case exposure to radiation) really takes place (Salmon, 1998).

Causal realism

Positions of causal realism do not reduce causation to another relation than the causal relation, but they try to give a meaning to this relation. They generally presume, that a real ontological relation of causation is reflected in the causal relation and therefore it is not a mere construct of thought, it cannot be reduced to a custom, as done by Hume, it even cannot be derived merely from the logical system of conditions. According to this conception, the causal relation is scientifically objective and therefore it is possible to find an objective standpoint for its assessment. This concerns neo-aristotle, or neo-thomistic theories, which create an alternative to a dominant regularity theories spectrum. All come out of a conviction on the existence of a real external world, which we are able to perceive by our senses and reason.

INUS theory

The so-called INUS („*Insufficient but Necessary part of a set of conditions that is itself Unnecessary but Sufficient for the result*") theory was introduced by John Mackie, who modifies ideas of John Stuart Mill in his analysis (Mill, 2013). Thus according to Mackie, the cause is insufficient,

however a necessary part of the condition, which is itself not necessary, however sufficient for the result (Mackie, 1980). At the same time, Mackie also introduced a notion of the so-called causal field (Mackie, 1965), when according to himsingular causal statements are always relative to a certain causal field. According to some authors, such as for example Michael Scriven, however the notion of cause as the INUS condition is in the case of Mackie again derived from the notions, which implicitly contain causation in them, even if it is hidden. For the necessary and sufficient cause are terms, through which he created in the notion of causation a definition by *"circulusvitiosus"*. Similarly as Mill, Mackie also does not differentiate between circumstances of a phenomenon and a cause of this phenomenon. Particularly his theory does not function in some scientific fields, especially in the processes controlled by statistical laws (Losee, 2011). However it has its application in legal theory.

Singular theory

In 1926, Curt Ducasse drew attention to unfitness of all general conceptions of causation in common social discourse. If we talk about causation, then according to Ducasse we do not want to search for scientific succession of conditions or constant conjunction, but we talk about single difference, which give rise to an effect. Ducasse utilized some typical examples. According to him, if a car engine fails, we do not ask about a sequence of events, we are merely interested in the difference between original circumstances, under which the engine operated, and the circumstances under which it does not operate. Therefore, he defines as a cause a particular and unique change in the immediate environment, which occurred directly before occurrence of a particular effect in question. Ducasse distinguishes between assumptions, which are to explain laws and assumptions, which only explain a course of singular events, while the causal relation arises only between singular events, during the change between one condition and the other condition (Ducasse, 1941). The problem of a singular approach manifests itself in the fact that it is not possible to create a general theory, based upon which clear decisions could be made in individual cases.

Causal pluralism

Causal pluralism is then a theory, which holds that *„causation is not the single kind of relation or connection between things in the world. Instead, the apparently simple and univocal term ´cause´ is seen as masking an underlying diversity"* (Godfrey-Smith, 2009, p. 326). Thus causal pluralism uses more approaches to causation however it also refers to hermeneutic diversity of meanings, even if their name remains the same (Froeyman& De Vreese, 2008). Some authors then consider the conceptual

diversity of the notion of causation as the basic problem of the current philosophical, as well as scientific discourse (Godfrey-Smith, 2009), nonetheless others (Froeyman& De Vreese, 2008), on the contrary acknowledge advantages of the conceptual use of the term of causation.

Modern approaches in legal theory

Hans Kelsen –differentiation of factual causation and normative imputation

An important turning point in understanding the relation of cause and effect in the legal order is brought by an approach of the Kelsen´s Pure Theory of Law. Kelsen comes from the Hume´s thesis, which in summary claims that a normative conclusion cannot be deduced from purely factual premises. On the basis of this thesis Kant distinguishes two attitudes of human intellect, causal and normative (sein and soll, i.e. what "is" and what "ought" to be). According to Kelsen, we can then talk about the principle of imputation in social sciences determining social law - this way it is possible to understand the conjunction between the hypothesis of a norm and sanctions as a result, unlike causation, which is present in natural sciences. The bond in causation is expressed by the modal verb "must", while on the legal (or moral) level the modal verb is the verb "ought". Similarly, in the normative system we talk about validity of rules, not about their existence. According to Kelsen: "*Causality and imputation are, as being remarked, two different kinds of functional connection, two different ways in which two states of affairs can be connected together as condition and consequence. The difference between the two is this: imputation (i.e. the relation between a certain behaviour as condition and a sanction as consequence, described by a moral or legal law) is produced by an act of will whose meaning is a norm, while causality (i.e. the relation between cause and effect described by a natural law) is independent of any such intervention. Another difference is that every concrete cause has to be considered as the effect of some other cause, and every concrete effect as the cause of some other effect, and so — by the very nature of causality — the chain of cause and effect is endless in both directions. In the case of imputation, the situation is completely different. … A sequence of imputation does not have an unlimited number of elements, as a sequence of causality, but essentially only two elements"* (Kelsen, 2000, p. 39).

The theory of dualist concept was then manifested in differentiation of purely factual concept of causality interconnected with counterfactual form in the condition of *conditio sine qua non* and in the normative framework of imputation of a rule, where it manifests especially in a protective purpose of the rule, theory of adequate and immediate condition,

foreseeability of damage and other normative limitations of the scope of responsibility.

Hart a Honoré – „common sense" and "INUS system"

In their publication of 1959 *„Causation in the Law"* Hart and Honoré came from a methodological analysis of a common language and tried to prove that the concept of causation both in law, as well as in common language does not embrace one concept of causal conjunction, but more concepts. Thus, to a certain extent they point out that on the level of a pluralist concept of causation in the philosophical discourse however they rather presume, that the concept of causation in law does not reflect philosophical and scientific causation, but rather a common-sense notion of causation in an ordinary language. According to them, this is exactly the concept relevant for actual application practice of courts, or as the case may be, for law-makers. According to them, causation is more empiric than analytic or logical relation. Hart a Honoré, similarly as Mackie, eventually utilize the INUS system of causation, even if there are some differences in their conception. At the same time, for legal discourse, they distinguish two models of statements *„causing harm"*, and *„occasioning harm"*, i.e. the model, which encompasses that one event (i.e. either human behavior, or an action) causes another (effect), or a model of the so-called interpersonal relationship between people, i.e. for example, when one person forces another to do something (instruction, aid, order, etc.) (Hart &Honoré 1985).

Wright – NESS system

Similarly as Hart and Honoré, Wright also comes from the concept, which focuses on the problems of a cause as a set of conditions. At the same time he unambiguously asserts that causation is a factual concept, not the political or normative one. In order to adjust his theory, he criticizes his predecessors for confusing inappropriately causal and non causal factors. Based upon this Wright asserts: *„We are not interested in all the possible causes, but only those that were tortious. This is the tortious-conduct inquiry. Policy considerations determine whether certain conduct will be treated as tortious. The second step, after the identification of tortious conduct which may have contributed to the injury, is the application of the actaul-causation requirement, which requires that the tortious conduct actually have contributed to the injury. This is the causal inquiry. At this stage it is irrelevant that there may also be other contributing factors (causes). …"* (Wright, 1985, p. 1774). Therefore Wright differentiates three steps in solving legal responsibility - firstly , exploration of other responsibility conditions, secondly, exploration of factual causation and thirdly, exploration of problems of immediate and adequate cause. On the

basis of Hart and Honore´s ideas, Wright creates the NESS (Necessary Element of a Sufficient Set) test: *"…the NESS test states that a particular condition was a cause of a specific consequences if and only if it was necessary element of a set of antecedent actual conditions that was sufficient for the occurrence of the consequence"* (Wright, 1985, p. 1774).

Causation in practice - what problems we can face and how to deal with them

Legal causation model should follow the solution of philosophical or scientific discourse. Unfortunately no consensus on the right sense of causation was reached. Generally speaking there are three ways of defining causation. Monist theories exist, which refer to the fact that only one type of a causal relation exists, causal pluralists, who claim that more various relations can be covered under the notion of causal relation, however all of them fill a similar abstract model, therefore it is suitable to explore them under a unifying criterion of causation, and causal eliminativists (such as for example Russell), who claim that use of the word "causation in scientific approach could be replaced with another, more suitable construct. In law, as a practical tool for materialization of relations in society, a bigger number of terms appear which are unified under the notion of causation. On the basis of a pragmatic test of utility, it is then suitable in individual causal theories to utilize their capacity for action in legal order, as all of these theories have their limitations (Losee, 2011).

But for test (conditio sine qua non)

In the law, as a primary element, the counterfactual theory is utilized, which is connected with the so-called "but for"test, or the *conditio sine qua non*, considered as a factual condition of causation (Koziol, 2007). This condition is expressed in the PETL principles in the Article 3:101 in the following manner: *"An activity or conduct (hereafter: activity) is a cause of the victim's damage if, in the absence of the activity, the damage would not have occurred."* There are numbers of obstacles connected with pure utilization of this formulation:

The first consists in the problems of an infinite sequence of causes within the meaning of general causation, which must be limited in a certain manner. In this case, the cause must be legally relevant, whereby we come from the factual judgment to the level of normative inference about subsumption of a given action under a criterion stipulated in the normative order. Here, the limitations can be considered especially such normative criteria such as the protective purpose of the rule, adequacy and immediacy of a cause, interruption of a causal chain (mental causation), or foreseeability of damage. The problem also consists in the fact that in a scientific sense,

we cannot talk about one cause, as this would not cause an effect in the absence of other conditions.

The second consists in the cases of the so-called causal uncertainty, when it is not possible to give in evidence regarding a hundred per cent causal relation. This problem is connected with the problems of multicausal damage and its proving in the case, when there is a causal uncertainty about whether a wrongdoer really caused the harm. Typically, these are for example medical malpractice disputes, when we know the input action as well as the output in form of the current condition of the patient, but what lies between (causal nexus) is not completely clear (this is described as the so-called black box element). For this reason, a number of opinions increases that in medical and legal disputes it would be more suitable to utilize other models, for example the mentioned theories of foreseeability and risk, or as the case may be compulsory liability insurance and the payment on the basis of strict liability, or settlement of the situation on the basis of the probabilistic theory (Bydlinsky, 2007) an utilization of the model of the causal proportional liability (Gilead, 2010), or possibly a model of partial liability (Koch, 2010). Possible recourse is also a remedy of turning the burden of proof, which can - in its essence - transform the purely factual causation into a non causal institute (Hart &Honoré, 2010).

The third problem is then connected with the problems of preemption causation and concurrent causation. In the first case, we talk about such an action, which would lead to a certain effect, however it would not be overdeterminated by another action, which had caused the same effect before. However, the result would occur only on the basis of the first action. Typical example: D shoots and kills P just as P was about to drink a cup of tea that was poisoned by C.(Wright, 1985, p. 1775). In the second case we talk about such a situation, when it is not possible to make an objective conclusion, which event caused the effect, however at least one of these events had to cause the effect. For example: C and D independently start separate fires, each of which would have been sufficient to destroy P´s house. The fires converge and together burn down the house. Each fire was a duplicative cause of the destruction of the house (Wright, 1985, p. 1776).

The fourth problem comes into existence in connection with the damage caused on the basis of failure to act (in the so called omissivedelicts). Eg. Moore does not consider the failure to act as an event (action), i.e. neither as an event (action) causing a contingent effect (Moore, 2009). The problem in the case of the counterfactual assessment of causal relation in connection with the failure to act is obvious for the reason that the failure to act consists in the absence of one particular action, even if there could be an infinite number of other acts. Even here, deliberations are clearly filled with normative contemplation, when a causal relation is

expressed in a way that if A had not violated his duty resulting from the legal order, a harmful event would have not occurred.

Protective purpose of a legal rule

Out of the above mentioned reasons, non causal institutes are often used in legal practice, which are to ensure functionality of the *conditio sine qua non* test. These institutes include other than a causal condition of attributability, therefore they have a normative character and their assertion is given on the basis of a political decision of the law-maker, or a judge. In the European law, the non causal element limiting the causation is considered to be especially the protective purpose of a legal rule and subsequently an adequate or immediate cause and foreseeablity of infliction of damage. The protective purpose of a rule results from the scope of this rule, out of its interpretation on the basis of traditional methods, in conjunction with its purpose, which consists in preventing the occurrence of damage. We are able to infer legal responsibility merely in the context with this purpose. This normative framework is described by the PETL principles in the article 3:201 Scope of liability.

Adequate and immediate cause

The theory of an adequate cause was formed in the German legal school, already at the end of the 19th century. The probability method was utilized in legal theory by Von Kries. He differentiated between the so-called objective probability (Möglichkeit) and subjective probability (Wahrscheinlichkeit). According to Von Kries, we can constitute the concept of objective causation as follows: *"A given contingency will be the adequate cause of harm if and only if it satisfies two conditions: (i) it must be a sine qua non of the harm, (ii) it must have ´increased the objective probability´ of the harm by a significant amount"* (Hart &Honoré, 2010, p. 5). The adequate cause theory serves for excluding improbable consequences from the tort liability. This is again a non-causal tool for the limitation of imputation of a rule. An immediate cause is usually also stated as a limiting tool, nevertheless it is more appropriate to reflect an adequate cause than state an immediate cause, as it is quite possible that a cause is temporally immediate, however absolutely inadequate for a harmful event.

Forseeability of causation of harm

The institute of foreseeability of caused harm is laid down in many legal orders. Its theory comes from a function of prediction, i.e. the possibility to see consequences of own acts. Generally, the criterion of foreseeability can be assessed according to two criteria, a subjective, or objective one. The subjective criterion considers a particular case, when a

particular individual could, or could not foresee effects. The objective criterion consists in a general criterion of what can be expected with respect to a regular course of events and what can be expected as an effect of violation of a legal duty. While the first criterion is firmly connected with another, traditionally necessary element in the responsibility scheme, with the fault, the other criterion is limiting vis-á-vis the wide causal understanding of a cause as a *csqn* condition.

Conclusion

Proposal of a solution

Under current uncertainty about one definitive opinion on the concept of causation both on the general, as well as on the legal level, it is in our opinion the most suitable to come in law from a methodological approach introduced by Froeyman and De Vreese for natural sciences and everyday life, utilizing the conceptual analysis from the perspective of utility of causal schemes (the so-called "*theoretical utility perspective*"). This theory embodies a notion that the construction of causation should include both a sufficiently wide causal definition, which should be general to such an extent, so that it can embody diverse causal criteria of individual theories and at the same time it could then solve utilization for conceptually diverse situations and cases (Froeyman& de Vrees, 2008).

We consider this approach to be suitable especially out the following reasons: in the legal context unlike the scientific context, it is necessary to resolve pragmatically doubts about causal connection, as it is necessary to decide on an individual specific case (prohibition of *denegatiojustitiae*). In the scientific sense, research can be left without a clear decision, as cognition is not definite and moves on (Hulswit, 2013). Unless truth about causal connection is objectively established, or social consensus exists on what the causal connection is, it is possible to leave deliberation in the stage of research. Thus the use of the conceptual analysis in a legal sense is suitable also for the reason that normative aspects and findings significantly intervene with deliberation. At the same time a perspective of linguistic analysis of causal connection (Neeleman& van de Koot, 2012) is hereby accepted, which occurs in our verbal expressions (by the mere fact that often it is possible to distinguish direct and indirect causal connection in expressions, this being on the basis of different verbs (Wolff, 2003)). At the same time it is necessary not to forget the fact that in the law as a pragmatic tool for finding justice, quite often the so called legal fiction and legal assumptions are used as suitable. Their substantiation is then possible also in causation, as if we intuitively understand something as morally right and it is in accordance with general moral requirements, it would be then suitable to use a rule formulated in such a manner (from a pragmatic perspective) in the

legal regulations. The said conceptual method also makes it possible to work better and correct a potential inconsistency of the general causal approach by our moral intuition in individual pragmatic cases. The above mentioned methodological approach to causation (which will be called as a "pragmatic approach" for the purposes of this article), can be utilized on the basis of some paradigmatic models.

In what way should this method work? First, it is necessary to find a general clause, which will be sufficiently general, so that it can encompasses all cases of causal relations, even if it encompassed also non causal elements. Generally, it is possible to agree that causation is that what causes change, or diversity. A general condition of causal relations is their irreflexivness and asymmetry (i.e. if A causes B, then B does not cause A, at the same time no causal loops can be achieved so if a $\rightarrow$ b and at the same time b $\rightarrow$c then it is not true that c $\rightarrow$a). Such a summary may not be valid in the natural causation however it is completely usable in the legal causation. Hence, this general scheme can be always used in a causal model.

This should be a starting point for the legal analysis however such a summary apparently contains a big number of non causal relations. It would be at variance with moral intuition to derive responsibility from this general model. Therefore, it is necessary to utilize also other concepts of causation, which can be found in a theory and apply them to a specific case.

In the theory of civil law responsibility, the regular succession can be used, which admittedly does not have to be generally valid in the science however it can be always utilized on the legal level. The concept of spatiotemporally contiguity, i.e. the cause and its effect must be temporally and spatially connected, can be also used as a starting point. These rules reflect regularity theories. However, one of the starting points of legal responsibility is also the counterfactual theory embodied in the condition of *conditio sine qua non*. In connection with the test of *csqn* it is possible to use the procedure of elimination (i.e. the mental elimination of the action being assessed from the causal tests and ascertainment of a hypothetical effect, provided that the causal effect remains unchanged after taking out the action *c* from the causal chain, than *c* is not a cause of *e*) and the procedure of substitution (in the case of failure to act, i.e. replacement of an illegal action with an action in compliance with legal regulations and by exploration, whether a harmful event would occur in such a case).

On the contrary the Wright´s NESS system can be applied in such cases, where the above mentioned *csqn*condition does not offer a correct solution (it is at variance with our intuitive conviction), i.e. in the case of multiplicity of sufficient causes. In such a case the *but for* test fails, however the Wright´s NESS system can be used. The Wright´s NESS system is a useful tool for resolving causal issues associated with the so-called

concurrent causation and further to this in the case of competitive causation. However, it cannot be successfully applied in omissions, and in the case of the so-called asymmetrically ovedetermined concurrent-cause cases (Adams, 2010).

With regard to the fact that legal deliberation on delicts must be always subordinated to normative framework of legal regulations, i.e to limit the range of causation to a specific spectrum of situations involving also the conditions stated in the protective purpose of the regulation and a method of its limitation, it is then possible to use the Hans Kelsen´s theory of imputation of legal standards. This is usable also for the so-called omissivedelicts, as we attribute a particular effect to violation of duties on level of legal regulations.

Based upon an extended analysis for individual paradigmatic examples, it is then possible to create a pragmatic model of plural causation, which will be suitable for use in legal practice.

This outline of the method of causal pragmatism must be subsequently explored in line with moral intuition, which according to us can be explored on the basis of empiric studies and further to this in the context with individual areas, to which the law of tort relates. For example, it is possible to state a situation in the medical and legal disputes, where the causal uncertainty about the causal relation being detected is high and we can talk about the so-called "black box" (Schiemann, 2007). Admittedly, in such a case the following models appear as adequate: the model of general causation, consisting in the change of an event, or state of affair *(c → e is a causal relation, if, and only if on the basis of an event c a change occurred with an effect of e or if a change of a state affair c to a state affair e occurred)*, non identical relation *(c → e is is a causal relation, if, and only if an event (state of affairs) c is not identical with an effect e)* and the relation of asymmetry *(c → e is a causal relation, if, and only if it is true that c causes e, then it cannot be the case e causes c)*, further to this, also the following rules of time sequence *(c → e is a causal relation, if, and only if an event type c (a cause) temporally precedes an event type e (an effect)*) and spatial contiguity *(c → e is a causal relation, if, and only if c a spatial contiguity with the type e (an effect)*) can be used in the test of causation. However, the theory of regular succession *(c → e is a causal relation, if, and only if e-type events regularly follow c-type events)* is not usable in this case, as in the case of some disorder processes, only the singular approach to causation is adequate, therefore it is not possible to presume generally on the basis of type cases, identically as the theory of the counterfactual analysis *(c → e is a causal relation, if, and only if, e is counterfactually dependent on c)*, as in this case, it cannot be explicitly said, whether the effect would occur

even without an illegal intervention of a doctor. Therefore, in such a case the conditio sine qua non is not suitable and the insistency of some legal orders upon proving the causal relation with a hundred per cent certainty is indefensible and at variance with the corrective justice and thus also with the tort law principles. Similarly, neither the Wright´s NESS test can be used as a model. However, it seems to be suitable to use the probabilistic theory *(c → e is a causal relation, if, and only if, c raises the probability of e)*, or as the case may be, the theory of statistical relevance *(c → e is a causal relation, if, and only if, the occurrence of c is statistically relevant to the occurrence of e)*, which currently found their practical models in some countries in the causal proportionate responsibility.

Conclusion

This whole article wants to draw attention to pluralism of causation theories not only in the scientific, but also in the legal and common language. However, these familiar theories also found their application in the scientific field and in many cases specific methods for determination of a causal relation are often used in specific fields of science. For this reason, we believe and we have tried to outline in this text that a starting point for the use of legal causation is the causal pluralism following from a pragmatic method of the most suitable effect for specific paradigmatic models of causation, i.e. its conceptual use. This does not mean that we would give up an entitlement to real nature of causality, but we rather use the fact that law as a tool often utilizes intuitive irrefutable presumptions, which on the basis of their utility perform function of a practical tool. Based upon the pragmatic method, it is then suitable to implement the causal methods dominating in the current discourse into the legal order, where the *conditio sine qua non* method appears to be inappropriate, or needs to be supplemented. A rational analysis of such a test should be then performed on the basis of exploration, whether an action embodies relevant general elements of causal models. Determination of such a theoretical framework presumes considerable efforts in reassessing the so far practice, nevertheless the current solution to the problems of causal conjunction through the civilist doctrine, but also the application practice of the Czech courts is not sufficient and creates conditions for unjust decisions.

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